

March 19 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. _____

(To be assigned by the Clerk of the Supreme Court)

Donald V. Snavely
Attorney for Intervenor/ Appellant
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FILED
MAR 19 2010
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MUTH-HILLBERRY, L.L.C.; MISSOULA CITY
COUNCIL FOR THE CITY OF MISSOULA,
MONTANA; and JOHN ENGEN, Mayor,

Appellants,

v.

KATHY HEFFERNAN; ROBIN CAREY;
DAVID HARMON, and NORTH DUNCAN
DRIVE NEIGHBORHOOD ASSOCIATION, INC.,

Appellees.

NOTICE OF APPEAL
BY INTERVENOR
MUTH-HILLBERRY,
LLC

NOTICE is given that Muth-Hillberry, L.L.C., the Appellant above-named and who is the Intervenor-Defendant in that cause of action filed in the Fourth Judicial District, in and for the County of Missoula, as Cause No. DV-08-84, hereby appeals to the Supreme Court of the State of Montana from the **Final Judgment entered in such action on the 16th day**

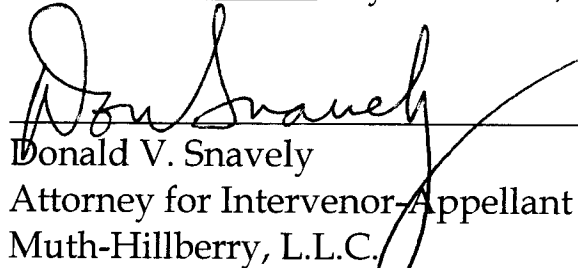
of March, 2010, and from the following Orders of the District Court entered prior to entry of said Final Judgment:

1. Order dated May 21, 2008 denying Defendants' motions to dismiss and strike;
2. Order dated January 14, 2009 denying Intervenor's cross-motion for summary judgment;
3. Order dated February 17, 2009 granting Plaintiffs' first motion to strike affidavits;
4. Order dated July 31, 2009 granting Plaintiffs' second motion to strike affidavits;
5. Order dated February 24, 2010 granting Plaintiffs' motion for summary judgment and denying Intervenor's cross-motion for summary judgment.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is **not** subject to the mediation process required by M. R. App. P. 7.
2. That this appeal is **not** an appeal from an order certified as final under M. R. Civ. P. 54(b).
3. That the notice required by M. R. App. P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.
4. That all available transcripts of the proceedings in this cause have **not** been ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal. No transcripts are necessary for this appeal.
5. That included herewith is the filing fee prescribed by statute.

Dated this 18 day of March, 2010.


Donald V. Snavely
Attorney for Intervenor-Appellant
Muth-Hillberry, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served by first class mail, postage prepaid, true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, each court reporter from whom a transcript will be ordered, and each party not represented by an attorney in the above-referenced District Court action, as follows:

Shirley E. Faust
Clerk of the District Court
200 West Broadway
Missoula, MT 59802

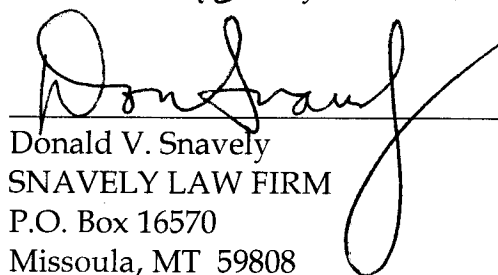
David K.W. Wilson, Jr.
Reynolds, Motl and Sherwood
401 North Last Chance Gulch
Helena, Montana 59601

Attorney for Plaintiffs-Appellees

Mr. Jim Nugent
City Attorney
435 Ryman Street
Missoula, MT 59802

Attorney for Defendants City of
Missoula and John Engen

Dated this 18 day of March, 2010.


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